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6 Attorneys for Plaintiff ROBERT ROSS

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 ROBERT ROSS,

13 Plaintiff,

14 v.

15 AT&T MOBILITY LLC,

16 Defendant.
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CASE NO. 4:19-CV-06669 (JST)

**DECLARATION OF CHRISTOPHER
GRIVAKES IN SUPPORT OF
PLAINTIFF'S MOTION TO FILE
FIRST AMENDED COMPLAINT**

Date: September 30, 2020

Time: 2:00 p.m.

Place: Courtroom 6

1 I, Christopher Grivakes, declare as follows:

2 1. I am counsel of record for Plaintiff ROBERT ROSS (“Ross”). I have
3 personal knowledge of the matters set forth herein, am competent to testify about them,
4 and such matters are true and correct.

5 2. On May 19, 2020, the Court issued its Scheduling Order (Docket No. 42).
6 The Order provides that new parties and claims must be added by June 4, 2020, unless
7 good cause is shown.

8 3. On June 5, 2020, Defendant AT&T Mobility LLC (“AT&T”) served its
9 Initial Disclosures. AT&T’s Disclosures refer to “One Touch Direct” without
10 disclosing the legal name, address, or role of any specific One Touch entity.

11 4. AT&T’s Disclosures were the first time I learned that AT&T had
12 contracted with a third-party call center that effected the SIM swap on Ross’ phone.

13 5. After learning that “One Touch Direct” was involved, I conducted an
14 investigation and learned that One Touch Direct LLC (“One Touch”) had contracted
15 with AT&T to provide call center services, that One Touch Direct- San Antonio, LLC
16 (“One Touch-SA,” and together with One Touch, the “One Touch Entities) was a
17 subsidiary of One Touch which employed the customer service representative who
18 effected the unauthorized SIM swap on Ross’s phone, and that the One Touch Entities
19 maintain an insurance policy which apparently covers some portion of the claims
20 asserted in the Complaint.

21 6. On July 29, 2020, I sent AT&T’s counsel Marcellus McRae a proposed
22 First Amended Complaint (“FAC”) which added the One Touch Entities, along with a
23 proposed Stipulation and Order to add them as parties.

24 7. On August 5, 2020, AT&T’s counsel Ashley Johnson informed me that
25 AT&T agreed to the proposed Stipulation and Order, but that it reserved the right to
26 challenge the proposed pleading, and requested revisions to the proposed Order to
27 reflect that intention.

28 8. AT&T’s intention to challenge the pleadings caused me to conduct further

1 research and investigation into the possible grounds for AT&T's intended pleading
2 challenges and to revise the proposed FAC to address the anticipated pleading
3 challenges.

4 9. During my investigation, I learned of the following for the first time,
5 which I am informed and believe are true: (i) AT&T has been accused of mismanaging
6 its call centers; (ii) there are readily available technology solutions that AT&T could
7 have implemented to prevent Ross's unauthorized SIM swap; and (iii) since before
8 Ross's SIM swap, AT&T was developing a technology solution to financial
9 institutions to prevent theft *after* unauthorized SIM swap has occurred, instead of
10 implementing the low-cost and readily available solutions which would have prevented
11 Ross's unauthorized SIM swap in the first instance, and has been marketing the
12 solution without success to this day. As a result of this new information, I added a
13 claim for punitive damages in the existing negligence count, and a new count for
14 fraudulent concealment.

15 10. On August 17, 2020, I sent a revised proposed FAC and Stipulation and
16 Order to Mr. McRae and Ms. Johnson.

17 11. On August 25, 2020, I was informed by Ms. Johnson that AT&T would
18 not enter into a Stipulation to file a FAC which added new claims against AT&T
19 because the new claims "are based on allegations that could have been included in the
20 initial complaint." A true and correct copy of Ms. Johnson's email is attached hereto as
21 Exhibit 1.

22 12. A true and correct copy of a red-lined version of the proposed FAC is
23 attached hereto as Exhibit 2.

24 13. A true and correct copy of a clean version of the proposed FAC is
25 attached hereto as Exhibit 3.

1 I declare under the penalty of perjury under the laws of the United States that the
2 foregoing is true and correct. Executed on August 24, 2020.

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4 /s/ Christopher Grivakes
5 Christopher Grivakes
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PROOF OF SERVICE

I hereby certify that on 8/25/2020, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

s/ Christopher Grivakes
Christopher Grivakes